



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, MONTANA OFFICE  
FEDERAL BUILDING, 10 W. 15<sup>th</sup> STREET, SUITE 3200  
HELENA, MONTANA 59626

September 29, 2003

Ref: 8MO

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Daryl Bends, Mayor  
Town of Lodgegrass  
Lodgegrass, MT 59050

Re: Administrative Order  
Docket No. **SDWA-08-2003-0068**  
Town of Lodgegrass  
PWS ID #MT0000277

Dear Mr. Bends:

Enclosed you will find an Administrative Order (Order), which the Environmental Protection Agency (EPA) has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations. Among other things, the Administrative Order finds that Town of Lodgegrass is a public water supplier as defined by the SDWA and that you have violated the National Primary Drinking Water Regulations (NPDWRs) at 40 C.F.R. §§ 141.23(d), 141.23, 141.24(f), 141.24(h), 141.151-141.155, 141.31(b), and 141.32/141.201 for: failure to monitor for nitrate, inorganic contaminants, volatile organic contaminants, and synthetic organic contaminants; failure to deliver Consumer Confidence Reports; failure to notify EPA of a violation; and failure to provide public notice of the violations, respectively.

If you comply with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to (1) a penalty of up to \$27,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

Also enclosed is a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Section 22 information sheet. The SBREFA sheet notifies small businesses of their right to comment on regulatory enforcement activities, and provides information on compliance assistance. Dissemination of this information sheet does not constitute an admission or determination by EPA that the business, organization or governmental jurisdiction is a small entity as defined by SBREFA.



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Please note that the effective date of the enclosed Order is the date of issuance. Within the next 10 days, please provide EPA with any new information that you believe the Agency is not aware of relating to the alleged violations in the Order. The information can be sent to Eric Finke at the address on the letterhead, or you may call Mr. Finke at (800) 457-2690 or (406) 457-5026. If you wish to have an informal conference with EPA, you may also call or write Mr. Finke. If you are represented by an attorney or have legal questions, please call Michelle Jalazo at (800) 227-8917 or (303) 312-6921.

I urge your prompt attention to this matter.

Sincerely,

**SIGNED**

John F. Wardell, Director  
EPA Montana Office

Enclosures

Order w/ sample bottle labels  
SBREFA notice  
Public Notice template

cc: Jan Sensibaugh, MDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF	)	
	)	
Town of Lodgegrass	)	
Lodgegrass, Montana	)	
PWS ID# MT0000277	)	
	)	
Respondent	)	
	)	ADMINISTRATIVE ORDER
Proceedings under section 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. § 300g-3(g)	)	Docket No. <b>SDWA-08-2003-0068</b>
	)	

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g) and its implementing regulations, as properly delegated to the Supervisors of the Legal Enforcement Program of the Office of Enforcement, Compliance and Environmental Justice and the EPA Montana Office, EPA Region 8.

FINDINGS

1. The Town of Lodgegrass ("Respondent") is a municipality and therefore a "person" within the meaning of 40 C.F.R. § 141.2.
2. Respondent owns and/or operates the Town of Lodgegrass Water System (the "System"), located in Big Horn County, Montana for the provision of water to the public for human consumption.
3. According to records maintained by the Montana Department of Environmental Quality (MDEQ), the System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is

therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.

4. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
5. According to a September 2000 sanitary survey by The Cadmus Group, Respondent's System is supplied solely by a groundwater source consisting of two wells and which serves approximately 450 persons daily.

#### FINDINGS OF VIOLATION

- I. Failure to monitor for nitrate
  - A. 40 C.F.R. § 141.23(d) requires public water systems to monitor their water annually for nitrate to determine compliance with the nitrate maximum contaminant levels ("MCLs") as stated in 40 C.F.R. § 141.62.
  - B. Respondent failed to monitor its water for nitrate 1999, 2000, 2001 and 2002, in violation of 40 C.F.R. § 141.23(d).
- II. Failure to monitor for inorganic contaminants
  - A. 40 C.F.R. § 141.23(c)(1) requires community water systems utilizing groundwater sources to monitor their water once in each 3 year compliance period to determine compliance with the MCLs for inorganic contaminants as stated in 40 C.F.R. § 141.62.

- B. Respondent failed to monitor its water in the 3 year compliance period January 1, 1999 - December 31, 2001, in violation of 40 C.F.R. § 141.23(c)(1).

III. Failure to monitor for volatile organic contaminants

- A. 40 C.F.R. § 141.24(f) requires that community water systems monitor their water once in each 3 year compliance period to determine compliance with the MCLs for volatile organic contaminants as stated in 40 C.F.R. § 141.61.
- B. Respondent failed to monitor its water for volatile organic contaminants in the compliance period between January 1, 1999 - December 31, 2001, in violation of 40 C.F.R. § 141.24(f).

IV. Failure to monitor for synthetic organic contaminants

- A. 40 C.F.R. § 141.24(h) requires all community water systems that have no detects during initial monitoring and have a population less than 3,301, to monitor their water once during each repeat compliance period to determine compliance with the MCLs for pesticide/herbicide organic contaminants as stated in 40 C.F.R. § 141.61(c).
- B. Respondent failed to monitor its water for pesticide/ herbicide organic contaminants during the three year compliance period January 1, 1999 - December 31, 2001, in violation of 40 C.F.R. § 141.24(h).

V. Failure to prepare and deliver a Consumer Confidence Reports.

- A. The regulations at 40 C.F.R. § 141.151 through 141.155 require community water systems to deliver annual Consumer Confidence

Reports (“CCR”) to their customers by July 1 covering the previous calendar year, and mail a copy of the report to EPA, followed within 3 months by a certification that the report has been distributed to the System’s customers.

- B. Respondent failed to deliver CCRs to its customers covering calendar years 2000 and 2001 and failed to mail a copy of the CCR and certification to EPA, in violation of 40 C.F.R. §§ 141.151 through 141.155.

VI. Failure to provide public notice of a violation

- A. 40 C.F.R. § 141.32 requires the owner or operator of a public water system to notify the public of any National Primary Drinking Water Regulation (“NPDWRs”) monitoring violation. Such notifications must be performed in the manner provided in 40 C.F.R. § 141.32 prior to October 31, 2000, and in the manner provided in 40 C.F.R. part 141 subpart Q on or after October 31, 2000.
- B. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any violation of the NPDWRs, including monitoring requirements.
- C. Respondent has not provided public notice of the noncompliance detailed in the preceding Sections I through V, in violation of 40 C.F.R. §§ 141.32 and 141.201.

VII. Failure to report a violation to EPA

- A. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any NPDWR to EPA within 48 hours.

B. Respondent failed to report to EPA instances of noncompliance detailed in Sections I through VI above, in violation of 40 C.F.R. § 141.31(b).

ORDER

Based on the foregoing Findings, and pursuant to section 1414(g) of the Act, IT IS ORDERED:

1. Within 30 days of the effective date of this Order, Respondent shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCLs appearing at 40 C.F.R. § 141.62(b). Respondent shall use the sample bottle labels accompanying this Order. Respondent shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
2. Within 30 days of the effective date of this Order, Respondent shall comply with the inorganic contaminant monitoring requirements as stated in 40 C.F.R. § 141.23(c)(1) to determine compliance with the inorganic MCLs appearing at 40 C.F.R. § 141.62. Respondent shall report analytical results to EPA within the first 10 days following the month which results are received, as required by 40 C.F.R. § 141.31(a).
3. Within 30 days of the effective date of this Order, Respondent shall comply with the organic contaminant monitoring requirements as stated in 40 C.F.R. § 141.24(f) to determine compliance with the MCLs for volatile organic contaminants appearing at 40 C.F.R. § 141.61. Respondent shall report analytical results to EPA within the first 10 days following the month which results

are received, as required by 40 C.F.R. § 141.31(a).

4. Within 30 days of the effective date of this Order, Respondent shall comply with the organic contaminant monitoring requirements as stated in 40 C.F.R. § 141.24(h) to determine compliance with the MCLs for pesticide/herbicide organic contaminants appearing at 40 C.F.R. § 141.61(c). Respondent shall report analytical results to EPA within the first 10 days following the month which results are received, as required by 40 C.F.R. § 141.31(a).
5. If Respondent has already provided the monitoring results of paragraphs above to MDEQ, Respondent need not resample but Respondent shall send a copy of the analytical results to EPA at the address in paragraph 9 within 10 calendar days of the effective date of this Order.
6. Within 30 days from the effective date of this Order, Respondent shall prepare and deliver CCRs to its customers, in accordance with 40 C.F.R. §§ 141.142-155, and annually thereafter by July 1 of each calendar year covering the previous calendar year. Respondent shall provide EPA a copy of the CCR along with a certification of the date and method of distribution of the CCR to the System's customers no later than 10 days after distribution.
7. No later than 30 days from the effective date of this Order, Respondent shall return to compliance with 40 C.F.R. §§ 141.201, 141.204 and 141.205 by providing public notice of the violations specified under the Findings of Violation in this Order. This notice shall be given by (1) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the System; AND (2) any other method reasonably calculated to

reach other persons served by the system, if they would not normally be reached by the notice, such as publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others; posting in public places or on the Internet; or delivery to community organizations. The System must repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days.

Respondent may use the CCR to provide public notice as long as (1) The CCR is provided to persons served no later than 12 months after the system learns of the violation or situation; (2) The public notice contained in the CCR follows the content requirements under 40 C.F.R. § 141.205; AND (3) The CCR is distributed following the delivery requirements under 40 C.F.R. § 141.204(c).

Upon the effective date of this Order, Respondent shall comply with the publication notification requirements at 40 C.F.R. § 141.201 et seq. following any future NPDWR violation. Respondent shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, including a certification that Respondent has fully complied with the public notice regulations, as required by 40 C.F.R. § 141.31(d).

8. Upon the effective date of this Order, Respondent shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any NPDWR to EPA within 48 hours.
9. Documents, certifications, analytical results, and public notices required by this

Order to be sent to EPA shall be sent by certified mail to:

Eric Finke  
EPA Montana Office  
10 West 15<sup>th</sup> Street, Suite 3200  
Helena, MT 59626

### GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order instituted under section 1414(g)(3)(A) of the Act, 42 U.S.C. § 300g-3(g)(3)(A), may subject the Respondent to an administrative civil penalty of up to \$25,000 per day of violation under section 1414(g)(3)(B) of the Act, 42 U.S.C. § 300g-3(g)(3)(B), or a civil penalty of not more than \$27,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(g)(3)(C) of the Act, 42 U.S.C. § 300g-3(g)(3)(C).
3. Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$27,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the effective date of issuance of this Order.

Issued this 29 day of Sept., 2003.

**David J. Janik**

Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**SIGNED**

John F. Wardell, Director  
EPA Montana Office

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 29, 2003.**

